

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re: Pork Antitrust  
Litigation

)  
) File No. 18CV1776  
) 21MD2998, 21CV1373,  
) 21CV1374, 21CV1454  
)  
) (JRT/HB)  
)  
)  
) Minneapolis, Minnesota  
) November 3, 2021  
) 10:13 A.M.

BEFORE THE HONORABLE CHIEF JUDGE JOHN R. TUNHEIM

UNITED STATES DISTRICT COURT JUDGE

**(MOTION FOR APPROVAL OF SETTLEMENT VIA VIDEO CONFERENCE)**

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APPEARANCES

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Plaintiffs:

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10:13 A.M.

(In open court via video conference.)

THE COURT: All right. Good morning, everyone. This is Civil Case Number 18-1776 and part of the multi district litigation case 21-MD-2998. We have a number of other member cases that are relevant. I won't state them. We will put them in the record.

Let's have counsel note appearances. First, let's go with you first, Mr. Raiter.

MR. RAITER: Good morning, Your Honor. Shawn Raiter from Larson King for the commercial and institutional indirect purchaser plaintiffs.

THE COURT: All right. Let's have other plaintiffs' lawyers note their appearances. First for the direct purchaser plaintiffs?

MR. CLARK: Brian Clark, Lockridge Grindal Nauen, for the direct purchaser plaintiffs.

THE COURT: Maybe you can introduce the others who are on, too, if you have that noted.

MR. CLARK: Of course. I can do so. We also have Joe Bruckner and Arielle Wagner and Joe Bourne from Lockridge Grindal Nauen and I believe Cliff Pearson from Pearson Simon.

THE COURT: All right. And then the consumer

1 indirect purchaser plaintiffs? Ms. Scarlet, maybe you can  
2 introduce who is there.

3 MS. SCARLETT: Shana Scarlett from Hagens Berman  
4 Sobol & Shapiro, Your Honor.

5 I'm the only one appearing on behalf of  
6 consumers, but I can't see the Zoom screen.

7 THE COURT: Okay. Anyone else for consumer and  
8 indirect purchaser plaintiffs?

9 MR. HEDLUND: Good morning, Judge. Dan Hedlund  
10 from Gustafson Gluek, and also Michelle Looby from our  
11 firm.

12 THE COURT: Good morning. Let's see.

13 How about Action Meat Distributors, Inc.?

14 Mr. Manion, are you here?

15 MR. MANION: I am, Your Honor, although I'm more  
16 here for observational purposes.

17 THE COURT: Sure. That's right. I just want to  
18 note appearances. I'm not expecting many of you to speak.

19 Let's see. Anyone else on the plaintiffs' side  
20 that I'm missing here?

21 MR. FINLEY: Good morning, Your Honor. Blaine  
22 Finley of Cuneo Gilbert & LaDuca also on behalf of the  
23 commercial and institutional indirect purchaser plaintiffs,  
24 and we also have Katherine Barrett Riley of Barrett Law  
25 Group on the line and Marcus Bozeman of Bozeman Law Firm on

1 the line, I believe.

2 THE COURT: Okay. Thank you, Mr. Finley.

3 Anyone else?

4 Okay. Now for defendants. Mr. Rashid, why don't  
5 you begin?

6 MR. RASHID: Good morning, Your Honor. Sami  
7 Rashid from Quinn Emanuel on behalf of JBS USA, and with me  
8 is Jessica Nelson from the Spencer Fane Law Firm.

9 MS. NELSON: Good morning, Your Honor.

10 THE COURT: Good morning.

11 Anyone else for defendants that wish to have  
12 their appearances noted? All right.

13 Okay. Let's begin.

14 Mr. Raiter?

15 MR. RAITER: Thank you, Your Honor. We're here  
16 today on a motion for final approval of a settlement  
17 between the commercial and institutional indirect purchaser  
18 plaintiffs and the JBS defendants.

19 You also have before you a motion for an award of  
20 attorneys' fees, reimbursement of costs already incurred,  
21 the establishment of a future litigation fund from this  
22 settlement and then also an award of service awards to the  
23 named representative plaintiffs.

24 As Your Honor knows via the preliminary approval  
25 order, this is a settlement of 12.75 million dollars paid

1 by the JBS defendants to the CIIPPs. It is a no reversion  
2 settlement. It is all cash. There is substantial  
3 cooperation also accounted for within the settlement terms,  
4 and because it's an ice breaker settlement, it's  
5 particularly valuable to the plaintiffs in this case.

6 We carried out the notice plan that Your Honor  
7 approved via the motion that we submitted, along with the  
8 preliminary approval papers, and as you saw from the  
9 declaration of Cam Azari, there were about 90,000 e-mails  
10 sent directly to businesses and individuals associated with  
11 food service or restaurant type entities.

12 There were wires sent to about 9,500 news outlets  
13 and websites. There were banner ads. There was  
14 substantial notice provided. Mr. Azari has averred that  
15 the reach was at least 70 percent to potential class  
16 members, and the defendants via counsel for the JBS  
17 defendants provided the CAFA notice to state attorney  
18 generals, and there has been no response from any of those  
19 as well.

20 The settlement was very well received. We did  
21 not have a single opt-out. We did not have a single  
22 objection, and we did not have a single request for the  
23 ability to appear at this hearing. So it was  
24 overwhelmingly and resoundingly well accepted we believe  
25 among the class members.

1           Your Honor is well familiar with the standard you  
2           need to look at whether the settlement is fair, reasonable  
3           and adequate. Essentially you're looking at whether the  
4           class and its interests would be better served by settling  
5           the litigation now or continuing the litigation. We have  
6           set out all of those elements that are set out in either  
7           the *Wireless Telephone* case or other Eighth Circuit  
8           opinions in our brief.

9           I will quickly run through them. I know Your  
10          Honor has done this many times and is well familiar with  
11          the standard, but the amount of relief being provided,  
12          12.75 million dollars, we believe as class counsel for the  
13          CIIPPs is a good settlement in light of JBS's value of  
14          commerce and in light of the amount of commerce that flows  
15          through the food service chain and the inherent risks of  
16          litigation.

17          Again, lump sum, no aversion, cooperation is  
18          important in this case as we consider the litigation with  
19          the remaining defendants. The complexity and expense of  
20          further litigation, you are well familiar with how complex  
21          anti trust class actions and multi district litigations  
22          are, and that's a factor that weighs in favor of approving  
23          the settlement.

24          There was no opposition to the settlement. It  
25          was arm's length negotiations in front of a very



1 experienced mediator, Professor Eric Green. We had several  
2 sessions with him. So there is I believe no evidence of  
3 collusion, and we as lead counsel or co-lead for the CIIPPs  
4 believe this is an excellent settlement that should be  
5 granted final approval.

6 And as Your Honor knows from the *Petrovic* case or  
7 *Welsch versus Gardenbring*, you can afford great weight to  
8 counsels' opinions about that. We have set out the Rule 23  
9 requirements for a settlement class. Again, Your Honor is  
10 very familiar with those elements.

11 We believe those have been met here. Numerosity,  
12 common questions of fact or law, typicality, adequacy all  
13 have been addressed. All are similar to the direct  
14 purchaser settlement with JBS that the Court has already  
15 granted final approval on as well.

16 If Your Honor has any questions thus far, I would  
17 be happy to respond to those.

18 THE COURT: Just a couple of questions. One, I  
19 noted in the materials a confidential cooperation  
20 agreement. I would like to review that in camera if that's  
21 okay.

22 MR. RAITER: Absolutely. We will send that to  
23 you in camera.

24 THE COURT: And then I will return that. It  
25 wasn't clear in the declarations that notices had been

1 given to the state attorneys general. It was in the  
2 memorandum that notice had been given, but I didn't see it  
3 in the declarations.

4 MR. RAITER: Yeah. So, Your Honor, my  
5 declaration also had a paragraph that tailed off and had a  
6 typo. So I will submit that in its intended form, which  
7 would include a declaration from me that counsel for JBS  
8 has provided the CAFA notices, and Mr. Rashid obviously is  
9 on the line here and can speak to that as well.

10 THE COURT: Is notice required to the Attorney  
11 General of the United States?

12 MR. RAITER: It goes to the -- yes, it does, if  
13 I'm not mistaken, and it also goes to Puerto Rico and some  
14 of the other territories.

15 THE COURT: All right. Those were the only two  
16 questions that I had.

17 Mr. Rashid, can I hear from you?

18 MR. RASHID: Nothing further to add, Your Honor,  
19 really, except I can confirm that the CAFA notice did in  
20 fact go out to all of the AGs.

21 THE COURT: Okay. Do you know whether the  
22 Justice Department needs to be advised?

23 MR. RASHID: I can't actually, without looking at  
24 the law, tell you whether or not they need to be advised,  
25 but I can tell you that the CAFA notice did go to them.

1 THE COURT: It did go to them?

2 MR. RASHID: Yes.

3 THE COURT: Okay. All right. Between you and  
4 Mr. Raiter if someone can make sure there is a declaration  
5 in the record, then I would be satisfied with that.

6 MR. RAITER: Will do, Your Honor.

7 The last point on the terms of the settlement  
8 that I think are relevant here is that you do not yet have  
9 before you a plan of allocation or a proposal as to how we  
10 would allocate this money among the class members, and we  
11 would plan to do that via a motion to you in the future.

12 THE COURT: Okay. That's fine.

13 MR. RAITER: Okay. And unless Your Honor wants  
14 to talk further about the merits of the settlement, the  
15 Rule 23 approval process, whether it's fair, reasonable and  
16 adequate, I would move to attorneys' fees and costs,  
17 service awards.

18 THE COURT: Okay. Unless Mr. Rashid has  
19 something he would like to say.

20 MR. RASHID: Nothing for JBS, Your Honor. Thank  
21 you.

22 THE COURT: Okay. Why don't you move on, then,  
23 Mr. Raiter, and at the end, I will give anyone else a  
24 chance to speak if they wish to, but go ahead, Mr. Raiter.

25 MR. RAITER: Thank you, Your Honor. We have also

1 made a separate motion, which we provided notice to the  
2 class of via the settlement website, which is what we told  
3 the class members we would do in the notice, that they  
4 would have advance notice of the fees, costs, expenses,  
5 that we were seeking.

6 And again, that was posted to the settlement  
7 website, and there have been no objections, no comments, no  
8 requests to be heard regarding the attorneys' fees and  
9 costs, service award motion.

10 So we're asking for reimbursement of costs  
11 already incurred roughly in the amount of \$338,851.91. I  
12 guess that's not roughly. That's precise. Those are costs  
13 that we have already incurred on behalf of the settlement  
14 class members.

15 They relate to gathering data, electronic  
16 databases, expert expense, et cetera, and we detailed that  
17 in the submission. We have also asked for the  
18 establishment of a future litigation fund for expenses.  
19 That is a fund that we would use only for expenses related  
20 to the pursuit of the remaining defendants.

21 Other courts have granted such requests. We have  
22 cited the *Packaged Ice* case. The Manual for Complex  
23 Litigation has approved such funds in the past, as has  
24 Judge Battani in the very large and sprawling *Auto Parts*  
25 litigation in Detroit.

1           We have asked for 8 percent of the gross  
2       settlement funds to be set aside. That totals \$1,020,000.  
3       That too was noticed in the class notices so that any class  
4       members who had any objections or concerns about that, they  
5       were apprised that that was our request that would be made  
6       to you, and we have not received any response to that.

7           Going forward, Your Honor, these cases are  
8       extremely expensive. I think you're well aware of that.  
9       As we move toward class certification, we have experts who  
10      need to do data analysis, data gathering, damages modeling.  
11      We have documents being produced that are posted and via  
12      shared databases, et cetera, and those are expenses that we  
13      expect and will incur going forward.

14           So we would ask that the Court allow that money  
15      to be set aside from this settlement for use in the future  
16      for these class members and their benefits and hopefully  
17      recovering more money from other defendants in the future.

18           We have also asked for an award of attorneys'  
19      fees. Of the 12.75 million dollar settlement, we have  
20      asked Your Honor to award one-third of the amount after the  
21      deduction of notice and administration, which is about  
22      \$98,000, and after that future litigation cost set-aside  
23      fund.

24           So if we take out the 98,000 and the million,  
25      twenty, we are left, when you take one-third of that, the

1 fee being requested is 3,877,376.47. If you did that  
2 calculation on the gross settlement, that would be 30.4  
3 percent of the gross amount, and as Your Honor knows having  
4 done this many times before, there are a number of factors  
5 that you look at to decide whether the fee being requested  
6 is reasonable.

7 You look at the benefit conferred, the risk to  
8 which counsel is exposed, the difficulty and novelty of the  
9 legal issues, the skill of the lawyers, the time and labor  
10 involved, reaction of the class and a comparison of this  
11 percent versus other percentages awarded in similar cases  
12 or other cases in the district.

13 And we have cited in the papers, for example,  
14 *Yankton* talks about the common awards being between 25  
15 percent and 36 percent in this district, and either the one  
16 third or the 30.4 percent that we have requested would fall  
17 squarely within that range. The benefit, as we have  
18 already talked about, all cash, no aversion.

19 These are inherently risky cases. Because there  
20 has not been public Department of Justice involvement in  
21 this litigation we believe exposes counsel to a greater  
22 risk of not being successful. Certainly sitting in the  
23 indirect purchaser slot, we have other defenses that the  
24 defendants assert against us making our case more difficult  
25 and more challenging, again increasing the risk.

1           The time and labor involved, Your Honor, as we  
2       laid out in the papers, as of the time we submitted that  
3       motion had 5,889 attorney hours, 15,023 hours for  
4       paralegals and law clerks. When we apply those hours to  
5       the customary rates charged by lawyers working on behalf of  
6       the CIIPPs, the Lodestar is \$4,692,051.

7           The Lodestar multiplier on that number, given the  
8       fee being requested of 3.877 is a negative multiplier. So  
9       the multiplier being sought here for this settlement at  
10      this time is .82 negative. As Your Honor knows from other  
11      cases and from cases in the district, there are multipliers  
12      that are often awarded, you know, two to five times on a  
13      positive basis. So this negative Lodestar multiplier we  
14      believe is reasonable and should be allowed.

15          We have also asked for service awards from this  
16      settlement. At this point we don't know if we will have  
17      other settlements. We sure hope we do, but because the  
18      class representatives who have already provided substantial  
19      cooperation, who have already provided data information  
20      that is being disclosed or has been disclosed to the  
21      defendants, who have volunteered to be deposed at some  
22      point in this case, to appear at trial if necessary, we  
23      have asked for \$7,500 for each of them.

24          I do have another caveat there, Your Honor. We  
25      just this morning filed a dismissal that we have already

1 previewed with the defendants, and one of the class  
2 representatives who we have listed in the proposed order  
3 that we have already submitted to you, and that is Betty's  
4 Eat Shop, is withdrawing from the case as a representative  
5 plaintiff.

6 So I would propose to send to Your Honor an  
7 amended order withdrawing her or that business so that she  
8 would not receive a class representative service award, and  
9 she understands that that is the case.

10 Your Honor, this is, again, lengthy litigation,  
11 and in particular for businesses, it can be a substantial  
12 amount of work. If you have an individual who is serving  
13 as a class representative, they only have so much  
14 information. They don't have to produce a ton of documents  
15 or spend a lot of time.

16 Representing institutions and businesses like we  
17 are, it is a substantial investment that they make in these  
18 cases, and we believe that the \$7,500 award is justified  
19 under these circumstances, and with that, Your Honor,  
20 that's all I have to say unless you have questions.

21 THE COURT: I don't.

22 Mr. Rashid, would you like to comment?

23 MR. RASHID: JBS is taking no position on this  
24 portion of plaintiffs' motion.

25 THE COURT: All right. Thank you.



1           Anyone else wish to speak today that is here?

2           All right. I'm not hearing anybody. Sometimes it takes a  
3           moment to get off of mute.

4           All right. Mr. Raiter, any final comment?

5           MR. RAITER: No, Your Honor, other than we will  
6           send and file with the Court my amended declaration that  
7           has the typographical error fixed, which also addresses the  
8           CAFA notice, and then I will send an amended order for the  
9           service award issue that we mentioned today.

10          THE COURT: All right. So I will await the  
11          remaining material being filed and the in camera review of  
12          the confidential cooperation agreement, but I am prepared  
13          to approve the motion for final approval, grant the motion  
14          for final approval.

15          And I don't see any issues relative to the fees  
16          and costs issues in the case as well, but I would like to  
17          get the remaining materials and the updated first before  
18          finally issuing the order, which I would handle quickly.

19          All right. Anything else we need to address  
20          today?

21          MR. RAITER: No, Your Honor.

22          THE COURT: Mr. Rashid, anything else?

23          MR. RASHID: No. Thank you, Your Honor.

24          THE COURT: All right. Thank you, everyone. I  
25          appreciate everyone participating today by video

1 conference, and we will be in recess.

2 Thank you.

3 MR. RAITER: Thank you, Your Honor.

4 MR. RASHID: Thank you.

5 **(Court was adjourned.)**

6 \* \* \*

7 I, Kristine Mousseau, certify that the foregoing  
8 is a correct transcript from the record of proceedings in  
9 the above-entitled matter.

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13 Certified by: s/ Kristine Mousseau, CRR-RPR  
14 Kristine Mousseau, CRR-RPR  
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